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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte RONALD P. KNOCKEART, BOB DRURY, MELVIN A. RODE,
STEVEN BROWN, HARRY ASHER, and PAUL A. JOZEFOWICZ

_____

Appeal 2007-4538
Application 10/675,626
Technology Center 3600

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Decided: January 28, 2008

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Before WILLIAM F. PATE, III, HUBERT C. LORIN, and JENNIFER D. BAHR,
Administrative Patent Judges.

PATE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final
rejection of claims 27 and 39-55, all the claims currently pending in the
application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants' claimed invention is directed to a method for collecting traffic information (Spec. ¶ 28-31). Claims 27 and 54, reproduced below, is representative of the subject matter on appeal.

> 27. A method for collecting traffic information comprising:
> storing a map of a road network at a vehicle, the road network having a plurality of segments, the map including stored speed for at least some of the segments;
> at the vehicle, receiving a command from the server to enable logging of the traffic related data;
> tracking the location of the vehicle, including detecting when the vehicle traverses each of the plurality of segments;
> for each detected segment, logging traffic-related data, including data related to the vehicle's speed on the detected segment;
> receiving a request to transmit the logged data to the server; and
> transmitting the logged data to a server.

> 54. A method for collecting traffic information comprising:
> storing a map of a road network at a vehicle, the road network having a plurality of segments, the map including stored speed for at least some of the segments;
> at the vehicle, receiving a command from a server to enable transmission of a traffic notification;
> tracking the location of the vehicle, including detecting when the vehicle transverses each of the plurality of segments;
> for each detected segment, comparing the vehicle's speed on the segment to a stored speed for that segment, and

2

> if the vehicle's speed on the segment deviates from the stored speed,
> transmitting a traffic notification identifying that segment to a server;
> wherein the server sends to the vehicle the command to enable
> transmission of the traffic-related data if the server has provided planned
> routes along the road network to the vehicle.

THE REJECTION

The Examiner relies upon the following evidence in the rejections:

| Mandhyan | US 5,539,645 | Jul. 23, 1996 |

The following rejection is before us for review.

1.Claims 27 and 39-55 stand rejected under 35 U.S.C. § 102(b) as anticipated by Mandhyan[1].

ISSUE

Appellants contend that Mandhyan fails to disclose (1) enabling "transmission of the traffic-related data if the server has provided planned routes along the road network to the vehicle" (Appeal Br. 7), and (2) "a command to enable logging of traffic related data and a separate request to transmit the logged data" (Appeal Br. 8). The Examiner found that (1) Mandhyan teaches a central server providing planned routes, i.e., bandwidth patterns, to probe vehicles and activating the probe vehicles to transmit collected information (Answer 4-5) and (2) the claimed invention does not require the command to enable logging and the request to transmit data be separate signals (Id.).

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[1] The Examiner withdraw the rejection of claims 25, 27, 45-53, and 55 under 35 U.S.C. § 102(e) as anticipated by Fleck (Answer 2).

The issue before us is whether Appellants have shown that the Examiner erred in rejecting claims 27 and 39-55 as anticipated by Mandhyan.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1.Mandhyan teaches a system for monitoring traffic flow using calibrant or probe vehicles to collect and report detailed information describing vehicle speeds actually being experienced along the routes of interest (Mandhyan, col. 2, ll. 46-50).

2.The detailed information is loaded into a central station computer, where it is processed (Mandhyan, col. 2, ll. 50-52).

3.During a monitoring phase probe vehicles are provided with (i.e., downloaded) a stored record of bandwidth patterns (i.e., speed data) for one or all of the routes to be monitored, and are programmed to transmit their speed data whenever the measured bandwidth (i.e., speed) differs from the mean bandwidth obtained from the calibration phase (i.e., the downloaded data for the route segment) (Mandhyan, col. 6, l. 54 to col. 7, l. 7).

4.Observed (i.e., measured) speed data is stored (i.e., logged) in the vehicle computer 118 to gather data which indicates a specific mean and variance for the current segment (location) (Mandhyan, col. 7, ll. 21-23).

5. The central computer 140 is programmed to activate selected probe
vehicles in order to have a sufficient number of active probes in each significant
segment of a route (Mandhyan, col. 7, ll. 29-33).

PRINCIPLES OF LAW

"A claim is anticipated only if each and every element as set forth in the
claim is found, either expressly or inherently described, in a single prior art
reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631
(Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

ANALYSIS

Appellants argue claims 39-44 and 54 as a group (Appeal Br. 6). We select
claim 54 as a representative claim and the remaining claims of the group stand or
fall with claim 54. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

In rejecting claim 54, the Examiner found that Mandhyan teaches providing
probe vehicles with bandwidth patterns for selected route segments (i.e., planned
routes) and sending the probe vehicles a message enabling collection/transmission
of speed data (Answer 4-5). Appellants contend that Mandhyan fails to anticipate
claim 54 because "Mandhyan does not disclose that the selection of probe vehicles
is in any way related to whether the server has provided planned routes along the
road network to the vehicle, and therefore does not 'enable transmission of the
traffic-related data if the server has provided planned routes along the road
network to the vehicle,' as recited in claim 54" (Answer 7). We disagree.

Claim 54 recites "wherein the server sends to the vehicle the command to enable transmission of the traffic-related data if the server has provided planned routes along the road network to the vehicle." Appellants appear to contend that this limitation requires a specific relationship between the selection of probe vehicles and the transmission of the enable signal which is allegedly not taught by Mandhyan. We disagree. This limitation requires only that the central control computer provide/transmit both a planned route and a signal to enable transmission of traffic-related data; there is no other relationship between the two required by the claimed invention. Mandhyan teaches transmitting both planned routes (i.e., bandwidth patterns for segments of monitored routes) and a signal to enable transmission of traffic-related data (Finding of Facts 3 and 5). As such, we sustain the Examiner's rejection of claims 39-44 and 54 as anticipated by Mandhyan.

Appellants argue claims 27, 45-53, and 55 as a group (Appeal Br. 8). As such, we select claim 27 as a representative claim and the remaining claims of the group stand or fall with claim 27. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Appellants contend that Mandhyan fails to anticipate claim 27 because "Mandhyan does not disclose or suggest a command to enable logging of traffic related data and a separate request to transmit the logged data" (Appeal Br. 8). The Examiner found that "[t]here is nothing in the specification or the claims that provides any substantive teachings for the requirement of two separate receptions that requires the separation of the step of receiving of a command to enable logging and the step of receiving a request to transmit data" (Answer 5).

In response, Appellants contend that "[b]y using the word 'the' and the past tense 'logged' in the phrase 'the logged data," it is clear that 'the logged data' refers [to] the data that has already been logged when the step is performed, not data that will later be logged" (Reply Br. 3). Therefore, Appellants contend that claim 27 requires the request to transmit data to be received after the data is logged and not before (*Id.*). We disagree.

Unless the steps of a method claim actually recite an order, the steps are not ordinarily construed to require one. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369 (Fed. Cir. 2003); *Interactive Gift Express, Inc. v. CompuServe Inc.*, 256 F.3d 1323, 1342-43 (Fed. Cir. 2000). *See also Loral Fairchild Corp. v. Sony Corp.*, 181 F.3d 1313, 1322 (Fed. Cir. 1999). However, such a result can ensue when the method steps implicitly require that they be in the order written. *Interactive Gift Express, Inc.* at 1342-43.

In the present case, nothing in the claim language requires as a matter of logic or grammar that the step of receiving a request to transmit logged data be performed after the data is logged. To the contrary, it only requires that the data be logged before it is transmitted, not that it be logged before a request to transmit it is received. Moreover, nowhere in the specification is there any statement that the order of steps as written in the claim is important, or any disclaimer of any other order of steps. We find Appellants arguments that claim 27 requires separate signals and/or a specific order to be unpersuasive. As such, we sustain the Examiner's rejection of claims 27, 45-53, and 55 as anticipated by Mandhyan.

<center>CONCLUSIONS OF LAW</center>

We conclude Appellants have not shown that the Examiner erred in rejection claims 27 and 39-55 under 35 U.S.C. § 102(b) as anticipated by Mandhyan.

<center>DECISION</center>

The Examiner's decision to reject claims 27 and 39-55 under 35 U.S.C. § 102(b) as anticipated by Mandhyan is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

<center>AFFIRMED</center>

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